From: John McNair
To: Microsoft ATR
Date: 1/27/02 11:22pm
Subject: Microsoft Settlement

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To Whom It May Concern:

I would like to express my concern about the proposed settlement in the case of United States of America vs. Microsoft Corporation. I oppose the settlement on several grounds enumerated as follows:

I. The settlement fails to address the real damages inflicted on Netscape Corporation, OEMs, and most importantly, consumers with respect to the bundling and dumping associated with Internet Explorer.

The United States originally brought the case in question against Microsoft because of harm it inflicted on consumers and competitors in the course of attempting to destroy Netscape. Microsoft spent over $100 million developing a product that it never intended to sell. The sole stated purpose of developing Internet Explorer was to destroy competition in the browser market. This is according to thousands of internal emails entered into evidence during the course of this trial.

Since the focus of this trial was illegal monopoly abuses concerning internet browser software, any remedy should give some attention to that particular market.

II. The settlement essentially provides that Microsoft must intend to obey the law in the future (at least for the term of the settlement).

This settlement is no stronger than existing antitrust legislation and hence is a waste of paper. At best one could argue that this agreement delineates specific actions that are acceptable and not acceptable so that Microsoft cannot claim ignorance of the intent of antitrust laws in the future. However, ignorance is not what lands Microsoft in court. It is arrogance, a total disregard for the rules that govern civilized people, that puts Microsoft on docket after docket.

III. The settlement is ineffective to prevent future abuses along the lines of Microsoft's well-documented modus operandi.

Since the agreement fails to address past grievances, the presumption is that it should curtail future criminal activity at Microsoft. The court would do well to remember who the defendant is. This is the company that:

A. intentionally caused their own applications to fail sporadically when running on top of DR DOS to make that operating system seem unstable. They were ironically forced to resort to this because DR DOS was actually a far superior product than MS DOS in terms of stability and usability.

B. forced OEMs to pay license fees to Microsoft for each computer shipped whether they shipped with IBM's PC DOS or with MS DOS. This made PC DOS appear to be more expensive. This practice continued until a court ordered them to stop -- eight or nine years later. And to my knowledge, Microsoft complied with that court order. However, the order came shortly before Windows 95 shipped, and where they left off with MS DOS, they picked up with Windows.

This practice is one of the major harms inflicted on consumers by Microsoft. It is impossible for a consumer to buy a pre-assembled computer from a major OEM without paying a license fee to the Redmond monopolist. Forget illegal anti-competitive practices, perjury, and extortion for a moment. Why should consumers be forced to pay for something they don't even use? In some cases Microsoft is paid for machines that ship with no operating system at all. This practice has to stop.

C. intentionally forced Word Perfect to crash sporadically when running on Windows so that it would appear to be even more unstable than Microsoft Word. This practice continued until Microsoft destroyed Word Perfect as a

viable competitor. Many still consider Word Perfect to be a superior product, but that consumer choice has all but vanished.

D. dumped $100 million worth of development effort into a product to destroy their competition.

E. repeatedly gave false testimony in this trial and even submitted doctored evidence.

F. is run by a man that has told reporters that he is more powerful than the President of the United States. Why then should he have to obey US law?

G. is emulating their Internet Explorer chicanery in an attempt to crush Real Networks. Microsoft is integrating Windows Media Player into the OS and making Real Player a very difficult alternative using the same tricks that worked on Netscape. If they force OEMs to ship include Media Player and exclude Real Player, and if they make Real Player extremely difficult to install, that consumer choice will vanish as well.

These are not speculative claims. Every statement above, except G, is either from William H. Gates, III, other Microsoft executives or substantiated in a court of law. This is a very short list of reasons not to trust this company to operate in good faith. Repeatedly Microsoft has promised not to abuse its monopoly power, and repeatedly they have reneged. Why should the court trust them this time? This agreement requires far too much good faith on the part of Microsoft to have any effect at all.

The loopholes are many and large. For one thing, the agreement for all practical purposes concedes Microsoft's current operating system monopoly is a fact of life. However, "the software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion." This is how the Internet Explorer debacle was enabled for so long. Microsoft simply declared that the browser was an integral part of the operating system in order to circumvent a previous court order. One could argue that this tends to push Microsoft into shoddier software design practices than even they are wont to embrace, but that is outside the scope of this complaint.

Section III.6.D provides that Microsoft shall disclose APIs in a timely manner while section III.J.1.a provides the legal loophole by stating "J. No provision of this Final Judgment shall: 1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of ... anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems ..." Microsoft has recently announced (1/15/02) that pervasive security is number one priority. This is too convenient. This gives them the argument that they do not have to release any APIs (or the ones they most want to protect) because of security risks. Microsoft can arbitrarily choose which APIs to expose, and still claim that they acted in good faith as they understood this settlement. The line is sufficiently fuzzy that any decent $500/hr lawyer should be able to drag out a case based on failure to disclose APIs for years.

Section VI.D restricts the definition of Personal Computer to x86-based platforms. Microsoft would not be in violation of this agreement if they extended their predatory practices to say, a Power PC-based platform. Microsoft has recently announced an initiative to produce a virtual hardware layer to run the Windows operating system that is similar in principle to the Java virtual machine. This would mean that Windows could run on any platform. Again the timing of such an announcement is far too convenient. This is yet another way that Microsoft can circumvent the terms of this agreement.

Microsoft has demonstrated repeatedly that they have no respect for the law. They will agree to anything that they deem to be a reasonably cost effective means of getting out of court. The terms of the agreement matter little to them for it will be business as usual within a month. Anecdotally, I have known of former Microsoft employees claiming that they know of no other company that spends more of its resources on simply destroying its

competition (using Fear, Uncertainty, and Doubt). Hoping that Microsoft will suddenly change its attitude is pure fantasy.

In short, this settlement is more of a pat on the back than the slap on the wrist it was intended to be. Microsoft has successfully waged a public relations campaign that has clouded the issues involved. When Bill Gates is whining that he's not allowed to innovate, it's easy for some to forget that he has been in court almost continuously for fifteen years for theft of intellectual property, bundling, dumping, coercion, and extortion. While not everyone has agreed with Judge Jackson rulings, I still think it must take some preponderance of evidence for a federal judge to characterize publicly the nation's most prominent CEO as a "common street thug." It's sick Orwellian humor that Microsoft should complain that they have been denied the opportunity to innovate when they have unashamedly destroyed anything that threatened their tyrannical stranglehold on the PC industry.

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